

**AGREEMENT
BY AND BETWEEN
THE CITY OF AUBURN
AND
BALTIMORE RAVINE, LLC
RELATING TO THE BALTIMORE RAVINE SPECIFIC PLAN**

This Agreement (the "Agreement") is entered into this ____ day of _____, 2010, by and between the CITY OF AUBURN, a municipal corporation ("City"), and BALTIMORE RAVINE INVESTORS, LLC a California limited liability company ("BRI, LLC"). City and BRI, LLC are from time to time hereinafter referred to in this Agreement as a "Party" and collectively as the "Parties."

PART I - RECITALS

- A. The "Development" as referenced in this Agreement, consists of the development of a mixed use, master planned development located in the southwestern portion of the City, as shown on Exhibit A. The master plan for the Development is referenced herein as the "Baltimore Ravine Specific Plan" or "BRSP." The "BRSP Area," as referenced in this Agreement, consists of (1) approximately 277 acres of land that has been designated for development pursuant to the Baltimore Ravine Specific Plan which has been segmented into (2) two plan areas ("Plan Area 1" and "Future Plan Area 2"). Plan Area 1, which is the subject of this Agreement, consists of approximately 130 acres of land currently owned and/or optioned by BRI, LLC¹ and located on the southern portion of the BRSP Area. Future Plan Area 2, which is not subject to this agreement, consists of approximately 147 acres that has been designated for potential future use as residential and mixed use property on the northern portion of the BRSP Area. In addition to the BRSP Area, there are four separate "Study Areas", as referenced in this Agreement, which are (1) located adjacent to the BRSP Area to the southwest and northeast; (2) approximately 129 acres in combined area; (3) designated for potential future use as residential property; and (4) not subject to this agreement. The BRSP Area and the Study Areas are more fully shown on Exhibit A.
- B. This Agreement is only applicable to Plan Area 1.
- C. BRI, LLC represents and warrants to City that BRI, LLC owns in fee or has options on the Plan Area 1 property.
- D. On November 29, 1993, the City adopted a comprehensive General Plan that included the BRSP Area within City's planning area. The City's General Plan designated the BRSP Area as an Urban Reserve. It is anticipated that the BRSP Area will be developed into a variety of land uses including residential, mixed-use commercial and open space uses. It is the intent of this Agreement that the BRSP Area will be developed in a manner that benefits the City and its residents.

¹ For purposes of this Development Agreement, BRI, LLC refers to all owners of property within BRSP Plan Area 1 on the date that this agreement takes effect and those who thereafter purchase or otherwise obtain any of the property in Plan Area 1 subject to this Development Agreement. The property owners as of the date of this Development Agreement are signatories to this agreement (see page 34).

- E. Following adoption of the City's General Plan, City and BRI, LLC have been engaged in a cooperative effort to prepare and approve a specific plan to govern the future development of the BRSP Area. These efforts culminated in the City's adoption and approval of (i) a General Plan Amendment; (ii) the BRSP; (iii) a Rezone for Plan Area 1; (iv) a Large Lot tentative map for Plan Area 1; and (v) a Development Agreement for Plan Area 1.
- F. Prior to its adoption of the BRSP, the City Council of the City of Auburn (i) reviewed and considered the significant environmental impacts of the Project and several alternatives to the Project, as described in that certain Final Environmental Impact Report – SCH#2007122091 (the "BRSP EIR" or "Project EIR") and (ii) adopted Resolution No. _____ on _____, 2010 to certify the BRSP EIR as adequate and complete, making Findings concerning Mitigation Measures and Alternatives (the "CEQA Findings"), adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Plan (the "MMRP"), all in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq. ("CEQA").
- G. One of the principal purposes of this Agreement is to further the cooperative relationship between City and BRI, LLC for the benefit of all residents of Auburn. The City and BRI, LLC join as Parties to the Agreement to ensure that the requirements of the Development Agreement Statute (California Government Code Section 65864 *et seq.*) are satisfied. This Agreement was approved on _____, 2010 pursuant to Ordinance _____ (the "Adopting Ordinance").
- H. This Agreement was written to achieve these fundamental purposes, among others:
- (1) that the City shall be kept and/or made "whole" by BRI, LLC with respect to all financial and other aspects of the planning, development, maintenance and operation of the Project from the Vesting Date, including, among other things, the costs to the City of providing the Project with public services and facilities, the payment of City's costs associated with the implementation of this Agreement, the BRSP, the Zoning (as defined in Section 2.02 below), the BRSP EIR, all other planning and environmental efforts described and envisioned by this Agreement, the Approvals, (as defined in Section 2.04 below), the Project, and the mitigation of the Project's environmental impacts;²
 - (2) upon the Vesting Date, BRI, LLC shall have a full and vested right, throughout the term of the Agreement, to the rights and obligations of this Agreement as relates to Plan Area 1.
- The Rights and Obligations of the Parties shall be construed and interpreted to give full effect to each and all of these purposes.
- I. As used in the Agreement, the term "Rights" shall mean all of the vested and other rights and benefits of the Agreement, and the term "Obligations" shall mean all of the duties, obligations, responsibilities and other burdens of the Agreement.

² A separate agreement between the City and the BRI, LLC covered all costs related to planning, environmental review and other activities related to BRSP approval incurred prior to the Vesting Date.

PART II - AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth in Part I and elsewhere in this Agreement, the Parties hereby agree as follows:

ARTICLE 1. GENERALLY

Section 1.01. Definition of BRI, LLC. As used in this Agreement, "BRI, LLC" shall mean Baltimore Ravine Investors, LLC, as that business entity existed on the Vesting Date (as defined in Section 1.02 below), and any "Affiliated Party." In addition, "BRI, LLC" shall mean any signatory to this agreement, any owner of property within Plan Area 1 on the Vesting Date, and any successor, assignee, or transferee or other person, entity or organization that City Council, in its sole discretion, approves in writing to exercise the Rights and bear the Obligations of this Agreement. As used herein, the term "Affiliated Party" shall mean any person, entity or organization in which BRI, LLC or any of its members has a controlling interest. As used herein, "controlling interest" means the right to control the management decisions of such person, entity, or organization, whether by contract or otherwise.

Section 1.02. Vesting Date. This Agreement is entered into by and between the City and BRI, LLC and shall take legal effect on _____, the effective date of Ordinance No. _____ approving this Agreement ("Vesting Date").

Section 1.03. Effectiveness.

(a) As to City and BRI, LLC, this Agreement shall become effective as to Plan Area 1 on the Vesting Date.

(b) The Rights and Obligations of this Agreement constitute covenants and/or equitable servitudes pursuant to California law (including, without limitation, Civil Code Section 1468) running with Plan Area 1 and such Rights and Obligations shall be enforceable by and against any owner of Plan Area 1. The terms and conditions set forth herein shall be for the benefit of or a burden upon Plan Area 1, and will run with the land of Plan Area 1, and shall be binding upon BRI, LLC and its successors and assigns during their respective ownership of all or any portion of Plan Area 1.

Section 1.04. Term.

Section 1.04.01. In General.

(a) The term of this Agreement shall commence upon the Vesting Date and shall continue until, and then terminate upon, the earliest of the following dates ("Termination Date"):

(1) 12:01 a.m. on MM/DD/2040.

(2) 12:01 a.m. on the date after this Agreement has been terminated, as provided in subparagraphs (3), (4) and (5) of this paragraph (a), as to all of Plan Area 1.

(3) This Agreement may be terminated with respect to the property included in a recorded

final subdivision map creating residential lots on any portion of Plan Area 1 (a “Residential Small Lot Final Subdivision Map” or “Small Lot Map”), provided that no further on-site or off-site infrastructure is required and no conditions remain to be satisfied before the City can lawfully issue building permits for such lots. Concurrently with or following the recordation of a Residential Small Lot Final Subdivision Map on any portion of Plan Area 1, BRI, LLC may request in writing and City’s Community Development Director or his or her designee (the “Director”) shall not unreasonably withhold, a issuance of a certificate of termination of this Agreement, in recordable form, solely as to the property included in such a final recorded map. Upon the Director’s issuance of such a certificate, this Agreement shall be deemed to be terminated with respect to the area covered by such final map. If Developer does not request or City does not issue such a certificate, this Agreement shall continue to apply to any individual residential lot within such area until this Agreement otherwise expires or terminates in accordance with its terms.

(4) As relates to an individual residential lot within Plan Area 1, this Agreement shall automatically terminate on the date the City issues a certificate of occupancy, final building inspection or similar permit for occupancy of a residential unit constructed on such lot.

(5) This Agreement may be terminated with respect to each parcel in Plan Area 1 which parcel is zoned for a use that does not require a Small Lot Map (other than parcels zoned for public uses) at the election of the then property owner and with the consent of BR, LLC and the Director, provided such consent shall not be unreasonably withheld, upon or after the issuance of a certificate of occupancy for such use and upon written notice to City of such election to terminate and upon BR, LLC’s and Director’s written consent to such termination. City shall cause any written notice of termination received and consented to pursuant to this section to be recorded at the then property owner’s expense.

(b) This Agreement shall be of no further force, effect or operation upon the Termination Date. In no event shall the expiration or termination of this Agreement result in any expiration or termination, without further action of City, of any Approval then in existence.

Section 1.05. Execution and Recordation of Agreement.

Section 1.05.01. Execution and Recordation. BRI, LLC shall execute this Agreement within five (5) business days of first reading of Ordinance No. [REDACTED] approving this Agreement. Provided BRI, LLC has so executed this Agreement and the City Council approves that ordinance on second reading, City shall execute this Agreement within five (5) business days of the second reading.

Section 1.05.02. Timing of Recordation. City shall deliver this Agreement to the County Recorder for recordation within ten (10) days following its execution of this Agreement.

Section 1.06. Incorporation by Reference of Preamble, Recitals and Definitions. The preamble to this Agreement, the Recitals of this Agreement and the definitions stated in each are hereby incorporated into this Agreement by reference as if set forth herein in full. However, if a definition provided in the body of this Agreement conflicts with a definition incorporated by reference, the definition provided in the body of this Agreement shall control to the extent of the conflict.

ARTICLE 2. PROJECT DESCRIPTION

Section 2.01. In General. As used herein, “Project” means the development of Plan Area 1 as described in the “Project Approvals” (defined in Section 2.02 below), including all on-site and off-site “Project Facilities and Infrastructure” (defined in Section 5.02(b) below).

Section 2.02. Project Approvals. As used herein, the term “Project Approvals” shall mean the entitlements described in Recital E including, in particular and without limitation: (i) those provisions of City’s General Plan that relate to or affect Plan Area 1, as the General Plan existed on the Vesting Date and as it may be amended from time to time in a manner consistent with the terms and provisions of this Agreement (the “General Plan”), (ii) those provisions of the BRSP (including the Design Guidelines) that relate to or affect Plan Area 1, as the BRSP existed on the Vesting Date and as it may be amended from time to time in a manner consistent with the terms and provisions of this Agreement, and (iii) the zoning of Plan Area 1, as the zoning existed on the Vesting Date and as it may be amended from time to time in a manner consistent with the terms and provisions of this Agreement (the “Zoning”); provided that Project Approvals shall not mean or include amendments to the General Plan, BRSP or zoning subsequent to the Vesting Date that conflict with the provisions of these Project Approvals as they existed on the Vesting Date unless BRI, LLC consents in writing to such conflicting amendments.

Section 2.03. Subsequent Approvals. As used herein, the term “Subsequent Approvals” shall mean those permits and approvals (other than the Project Approvals and amendments thereto) that may be necessary or desirable for the Project including, without limitation, (i) subdivision maps and related or similar approvals issued under the California Subdivision Map Act, (ii) development permits (including Site Plan Reviews and Conditional Use Permits as described in the BRSP), (iii) architectural review and design review approvals (as described in the BRSP), (iv) any other discretionary or ministerial permits or approvals of City that may be necessary or appropriate for build-out of the Project and (v) any amendments to any of the foregoing that may be necessary or appropriate for the Project.

Section 2.04. Approvals. Project Approvals, amendments to Project Approvals, and Subsequent Approvals are sometimes referred to in this Agreement collectively as the “Approvals” and each individually as an “Approval.”

ARTICLE 3. DEVELOPMENT OF PROJECT IN GENERAL

Section 3.01. Consideration to BRI, LLC. The parties acknowledge and agree that City’s agreement to perform and abide by the covenants and Obligations of City set forth herein is material consideration for BRI, LLC’s agreement to perform and abide by the covenants and Obligations of BRI, LLC set forth herein.

Section 3.02. Consideration to City. The parties acknowledge and agree that BRI, LLC’s Agreement to perform and abide by the covenants and Obligations of BRI, LLC set forth herein is material consideration for City’s agreement to perform and abide by the covenants and Obligations of City set forth herein.

Section 3.03. Rights of BRI, LLC Generally. BRI, LLC shall have a fully vested right to the Project and use Plan Area 1 consistently with this Agreement and “Applicable Law” (as defined in Article 4 below).

Section 3.04. Rights of City Generally. City shall have a right to regulate the Project and use of Plan Area 1 consistently with this Agreement and “Applicable Law” (as defined in Article 4 below).

Section 3.05. Parameters of Project. The permitted uses of Plan Area 1, the density and intensity of use of Plan Area 1, the maximum height and size of buildings included in the Project, and provisions for the reservation and dedication of land (collectively, the “Project Parameters”) shall be as set forth herein and in the Approvals.

ARTICLE 4. APPLICABLE LAW

Section 4.01. In General.

Section 4.01.01. Applicable Law Defined. Except as otherwise agreed by the Parties, the rules, regulations and official policies applicable during the term of this Agreement to the Project shall be those set forth in this Agreement and, except as otherwise set forth herein, the rules, regulations and official policies of City (including the plans, municipal codes, ordinances, resolutions and other local laws, regulations and policies of City) in force and effect on the Vesting Date (collectively, “Applicable Law”).

Section 4.01.02. Approvals as Applicable Law. Applicable Law shall include, without limitation, the Approvals as they may be issued from time to time in a manner consistent with this Agreement.

Section 4.02. Application of Other City Laws.

Section 4.02.01. No Conflicting City Laws. City may apply to the Project any rule, regulation or official policy of City (including any plan, municipal code, ordinance, resolution or other local law, regulation or policy of City) (each a “City Law”) that does not conflict with Applicable Law or this Agreement. City shall not, however, apply to the Project (whether by initiative, referendum, imposition of mitigation measures under CEQA or otherwise) any City Law that is in conflict with Applicable Law or this Agreement, unless BRI, LLC consents in writing to the application of such conflicting City law to the Project.

Section 4.02.02. Examples of Conflicting City Laws.

(a) A City Law shall be deemed to conflict with Applicable Law or this Agreement if it would have any of the following effects:

- (1) Prevent all or a portion of the Project from being developed, used, operated or maintained in accordance with the terms and provisions of the Approvals, as and when they are issued, or with the development standards identified above as Project Parameters;
- (2) Limit or reduce the overall density or intensity of the Project, or any part thereof, to a density or intensity that is lower than that specified in the BRSP;
- (3) Modify any land use designation or permitted or conditional use of Plan Area 1 in a

manner inconsistent with the BRSP;

- (4) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any portion of the Project except as specifically permitted by this Agreement;
- (5) Impose any condition, dedication or exaction that would conflict with Applicable Law or this Agreement;
- (6) Require the issuance of discretionary or nondiscretionary permits or approvals by City other than those identified in Applicable Law; or
- (7) Apply to the Project any provision, condition or restriction that would be inconsistent with the BRSP.

(b) If City attempts to apply to the Project a City Law which BRI, LLC believes to conflict with Applicable Law or this Agreement, BRI, LLC shall provide to City in writing a notice describing the legal and factual basis for BRI, LLC's position. The Parties shall meet and confer within thirty (30) days after the date of such written notice to seek a mutually acceptable resolution of this disagreement. If no mutually acceptable resolution can be reached, either Party may take such action as may be permitted under Article 10 below.

Section 4.03. Uniform Codes and Standard Specifications.

(a) Nothing herein shall prevent City from applying to the Project standards contained in uniform building, construction, fire or other uniform codes, as the same may be adopted or amended from time to time by City, provided that the provisions of any such uniform code shall apply to the Project only to the extent that such code generally applicable to the City as a whole.

(b) Nothing herein shall prevent City from applying to the Project "standards and specifications" for public improvements (e.g., streets, storm drainage, parking lot standards, driveway widths) as the same may be adopted or amended from time to time by City, provided that the provisions of any such standards and specifications shall apply only to the extent that:

- (1) They are generally applicable to the City as a whole, and
- (2) Do not conflict with standards contained in the BRSP.

Section 4.04. State and Federal Law.

(a) Nothing herein shall prevent City from applying to the Project any change in City Law to the extent that the application of such change is required by:

- (1) State or federal laws or regulations; or
- (2) Any regional governmental agency that, due to the operation of state law (and not the act

of City through a memorandum of understanding, joint exercise of powers authority or other agreement that is undertaken or entered into after the Vesting Date), has binding legal authority on City.

(b) If the application of such changes prevents or precludes performance of one or more provisions of this Agreement, City and BRI, LLC shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

ARTICLE 5. FINANCIAL COMMITMENTS OF CITY AND BRI, LLC

Section 5.01. In General. This Article 5 establishes a framework for the imposition and allocation, to the extent permitted by law, of fees, taxes, assessments and other revenues to be generated and/or paid by the Project and/or Plan Area 1. The provisions of this Article 5 are intended to prevent the Project from resulting in negative fiscal impacts on City, to facilitate the construction, operation and maintenance of infrastructure and facilities that will avoid or limit the physical impacts of urban growth; and to assist in the development of the Project in a manner that will provide long-term fiscal and other benefits to City, including increased employment opportunities, an increased tax base and revenues to City, and an enhanced quality of life for the City's residents.

Section 5.02. Basic Principles.

(a) The provisions of this Article 5 are intended to serve two basic purposes: first, that there shall be no cost to City for the construction of public facilities and infrastructure needed to serve the Project, or for the provision of municipal services to the Project, including the operation and maintenance of facilities and infrastructure necessary or desirable to facilitate development of and provision of public services to the Project; and second, that all costs associated with the construction of Project Facilities and Infrastructure, including operation and maintenance of Project Facilities and Infrastructure, shall be borne by the Project alone and not by the City or residents or property owners of land in the City outside Plan Area 1.

(b) As used herein, the term "Project Facilities and Infrastructure" shall include public facilities and infrastructure only to the extent such facilities and infrastructure serve the Project, and shall not include public facilities or infrastructure to the extent such facilities or infrastructure serve projects or areas other than the Project, unless the public facilities and infrastructure serving the Project are required to be oversized to serve other projects or areas in which case, BRI, LLC shall be entitled to reimbursement for any costs it advances for such oversized Public Facilities and Infrastructure to the extent of the oversizing. BRI, LLC and City acknowledge that when City acts to provide municipal services to the Project, it may also serve projects and/or areas other than the Project.

(c) In addition to specific funding requirements in this Agreement, BRI, LLC shall pay for all future and unanticipated costs incurred by the City related to this Agreement and/or the Project for activities initiated by the developer, including but not limited to costs associated with permitting or other requirements of federal, State or County agencies, and/or Union Pacific Railroad.

(d) BRI, LLC is also obligated to reimburse the City for any of the City's costs incurred pursuing any remedy under Article 10 of this Agreement. All fees incurred by the City in pursuing any remedy will be borne by BRI, LLC and its successors and assigns.

(e) In the event BRI, LLC's successors and assigns include multiple parties these parties will be proportionately responsible for the City's costs identified in this Article 5 in proportion to the acreage they own within Plan Area 1, excluding land designated by the Approvals for Open Space use.

(f) BRI, LLC is obligated to pay for all of the City's applicable fees in the amounts in effect at the time BRI, LLC applies for each permit or approval with respect to the Project.

Section 5.03 Establishment of Financing Mechanisms - Procedures for Establishment.

The establishment of any mechanism to finance the construction, operation or maintenance of Project Facilities or Infrastructure (each a "Financing Mechanism") and the issuance of any debt in connection therewith ("Project Debt") shall be initiated only upon the request of BRI, LLC which BRI, LLC may make in connection with any phase of the Project. BRI, LLC's request shall be made to City's Finance Director in writing and shall outline the purposes for which the Financing Mechanism may be established and Project Debt may be issued, the general terms and conditions upon which the establishment of the Financing Mechanism and/or the issuance of the Public Debt will be based and a proposed timeline for such establishment and/or issuance. City's consideration of BRI, LLC's request shall be consistent with the criteria set forth in Section 5.02 above. In the event BRI, LLC requests, in accordance with this Section 5.03 that a Mello-Roos Community Facilities District be formed to finance Project Facilities or Infrastructure through the issuance of debt and the levy of special taxes, City shall use its best efforts to cause such district to be formed and such debt to be issued and such special taxes to be levied, to the extent permitted by Applicable Law.

Section 5.04. Imposition of and Increases in Fees, Taxes, Assessments and Other Charges.

Section 5.04.01. Taxes and Assessments.

(a) During the term of this Agreement, BRI, LLC shall be bound to and shall not protest, challenge or cause to be challenged any and all City taxes, assessments, fees and other charges in full force and effect on the Vesting Date.

(b) City may apply to the Project any tax, assessment, fee or other charge not in full force and effect as of the Vesting Date if, and only if, that revenue measure is:

- (1) Agreed to by BRI, LLC; or
- (2) Generally applicable to the City as a whole.

(c) Notwithstanding the preceding subparagraphs, at the time BRI, LLC applies for any taxes, assessments, fees, or other charges that were in full force and effect as of the Vesting Date, BRI, LLC will be obligated to pay the then-current rate or amount of such taxes, assessments, fees or other charges.

Section 5.04.02. Implementation Charges.

BRI, LLC shall pay the City's reasonable staff and consultant time and other reasonable costs associated with City's adoption and implementation of this Agreement and the BRSP in the following manner:

(a) Subsequent Approvals - The permit processing fees for all Subsequent Approvals shall be at the City's actual cost. Applications for Subsequent Approvals shall be accompanied by a deposits in the following amounts:

<u>Entitlement</u>	<u>Deposit Amount</u>
Administrative Permit	\$100
Amendment	\$500
Appeal	\$500
Design Review Permit	\$1,000
Development Agreement	\$1,000
Environmental Review	\$1,000
Extension of Time	\$500
General Plan Amendment	\$3,000
Ordinance Amendment	\$3,000
Rezone	\$3,000
Sign Permit	\$100
Specific Plan Amendment	\$3,000
Tentative Map - Parcel Map	\$1,000
Tentative Map - Subdivision	\$3,000
Tree Permit	\$500
Use Permit	\$1,000
Variance	\$500
Other	As determined by the Director at time of submittal

The Director may, in his or her discretion, adjust these amounts in accordance with the change in the Consumer Price Index for All Urban Consumers for the San Francisco Metropolitan Statistical Area between the Vesting Date and the date a deposit is paid.

(b) Ministerial Permits - The City's standard permit processing fees in effect at the time an application or permit is applied for shall be paid upon application for any building permit or other ministerial permit, including but not limited to a grading or encroachment permit).

(c) Any and all other processing fees and staff time related to any Subsequent Approvals or other action requested by BRI, LLC whether or not such Subsequent Approvals are identified in this Agreement. These shall include, but not necessarily be limited to, mitigation monitoring, reimbursement agreements, review and approval of CC&R's, improvement plan review, Final Map review, CEQA compliance, and processing of approvals required of Union Pacific Railroad. The Director shall determine an appropriate deposit against the City's cost to process applications for such Subsequent Approvals.

(d) The Director shall draw upon any such deposit as necessary to recover the City's actual costs to

process the application for which a deposit is made and, if necessary, shall request the applicant to replenish that deposit should it be reduced below the amount the Director reasonably estimates to be required to complete the processing of the application. Upon final approval or denial of an application, any remaining balance of the deposit shall be returned to the applicant unless the applicant otherwise directs in writing, as where the deposit is to be used for a later application or refunded to a successor of the applicant.

Section 5.05. Reimbursement Fee.

(a) In light of the benefits of the BRSP to the Plan Area 1, and in accordance with Government Code § 65456, City shall impose a fee (the “Specific Plan Reimbursement Fee”), payable by the owners of property within Future Plan Area 2 (other than BRI, LLC) seeking governmental approvals which are required to be consistent with the BRSP, in an amount equal to each such owner’s fair share (based on acreage excluding land designated by the Approvals for open space use) of the cost of preparing, adopting and/or certifying, administering (to include third party consultant and legal costs reimbursed by BRI, LLC to the City), and defending the Approvals.

(b) The Specific Plan Reimbursement Fee shall be imposed and collected prior to or at the time of issuance of the first City approval which is required to be consistent with the BRSP, for the explicit purpose of reimbursing BRI, LLC for the Reimbursable Project Costs it incurs. City shall make a good faith effort to establish the Specific Plan Reimbursement Fee within one (1) year of the Vesting Date.

(c) In establishing the Specific Plan Reimbursement Fee, the City shall include interest payable to BRI, LLC on the basis of the Local Agency Investment Fund (“LAIF”) rate of return received by the City.

(d) Upon receipt of such Specific Plan Reimbursement Fees, City shall, to the extent permitted by law, pay such amounts to BRI, LLC or its assignee without regard to the status of the Project. If City attempts in good faith but is unable to collect Specific Plan Reimbursement Fees from a particular property owner or person seeking a governmental approval that is required to be consistent with the BRSP or City is legally barred from collecting such fees from any person or from paying the proceeds thereof to BRI, LLC, BRI, LLC hereby holds City harmless for such failure. However, City shall continue to collect Specific Plan Reimbursement Fees from other persons seeking governmental approvals that are required to be consistent with the BRSP and City shall pay such proceeds to BRI, LLC to the extent permitted by law and to the extent such proceeds are actually received by the City.

ARTICLE 6. COMMITMENTS OF CITY AND BRI, LLC RELATED TO PUBLIC IMPROVEMENTS

Section 6.01. Public Access to Plan Area 1.

(a) BRI, LLC shall construct and offer for dedication to the City primary access to Plan Area 1 by the extension of Herdal Drive from its current terminus, as shown on Exhibit A.

(b) BRI, LLC shall construct and offer for dedication to the City secondary access to Plan Area 1 via Rogers Lane as shown in Exhibit H prior to the issuance of the sixth (6th) building

permit for any structure within Plan Area 1. This construction shall include the extension of Rogers Lane, installation of at-grade railroad crossing improvements, and construction of Street D and the offer of all of those improvements to the City or to the Union Pacific Railroad as the Director shall determine.

(c) Prior to the issuance of the seventy-sixth (76th) building permit for any structure within Plan Area 1, BRI, LLC shall be responsible for each of the following:

(1) Construct and offer for dedication the Herdal-Werner Connector, with a bridge crossing of the eastbound UPRR, as shown on Exhibit C, or other acceptable alternative approved by the City as satisfying the requirements of Applicable Law including CEQA.

a. The City shall not be obliged to use condemnation proceedings to secure the right-of-way for the Herdal-Werner Connector through Future Plan Area 2.

(2) Providing access from Study Area 2 to the Herdal Werner Connector as shown on Exhibit C, or other acceptable alternative approved by the City as satisfying the requirements of Applicable Law including CEQA. BRI, LLC shall construct and offer for dedication the roadway(s) required to provide the access.

(3) BRI, LLC shall relinquish the rights of access of APN 040-350-052 to Rogers Lane.

(d) It is the City's desire to restrict access to Rogers Lane from the parcels that are adjacent to Rogers Lane in Placer County. BRI, LLC will not oppose efforts to restrict access to these parcels.

Section 6.01.01. Access Via Rogers Lane.

Prior to the issuance of the sixth (6th) building permit for Plan Area 1, BRI, LLC shall complete the following:

(a) BRI, LLC shall pave Street D to a width of 24' and offer it for dedication to the City. BRI, LLC shall provide shoulders measuring 3' wide on each side of the road, except where retaining walls are required. BRI, LLC shall install guard rails on retaining walls as required by Applicable Law.

(b) BRI, LLC Street D shall be built to full City standards including curb, gutter and sidewalk.

(c) BRI, LLC shall improve the existing at-grade railroad crossing for the eastbound Union Pacific Railroad to the satisfaction of the City and Applicable Law. BRI, LLC shall provide crossing arms consistently with Union Pacific Railroad standards and requirements and Applicable Law.

Section 6.01.02. Emergency Access Via Perry Ranch Road.

Prior to the issuance of the 6th building permit for any structure within Plan Area 1, BRI, LLC shall construct and offer for dedication to the City emergency access from Plan Area 1 to Perry Ranch Road in the general location as shown in Exhibit C. BRI, LLC shall build the emergency access as shown on Exhibit I and shall provide a 40-foot wide right-of-way, 20-foot wide asphalt paving, and a standard driveway apron at the northern end.

Section 6.01.03. Access Other Than Via Rogers Lane.

If BRI, LLC provides secondary access to Plan Area 1 by means other than Rogers Lane as provided in paragraph 6.01(b) above; BRI, LLC shall satisfy the following conditions prior to the issuance of the sixth building permit for any structure within Plan Area 1:

(a) BRI, LLC shall demonstrate to the satisfaction of the Auburn Fire Chief that the alternative secondary access is adequate to provide emergency access to Plan Area 1 under the standards of the Uniform Fire Code as adopted and implemented by the City.

(b) BRI, LLC shall obtain (1) the written approval of the Director and the City's Public Works Director or his or her designee ("Public Works Director") of the alternative secondary access route, and (2) the City Council's approval, in the manner required by Applicable Law of any associated changes to the BRSP.

(c) BRI, LLC acknowledges that CEQA compliance may be required for alternative access other than as analyzed in the BRSP EIR.

(d) BRI, LLC shall offer for dedication to the City rights to the alternative secondary access or demonstrate to the satisfaction of the Director that (i) such access is over an existing public right-of-way and/or (ii) on property owned or controlled by the Homeowners Association referenced in Section 6.13 below and that appropriate provision has been made for maintenance of that access to the City's satisfaction by the Homeowners Association.

(e) If secondary access to Plan Area 1 is provided pursuant to this Section 6.01.03, it shall be provided to the reasonable satisfaction of the Director and Perry Ranch Road shall be improved to the satisfaction of the Auburn Fire Chief to serve as an emergency vehicle access route.

Section 6.02. Other Roadway Improvements Necessitated by the BRSP.

Section 6.02.01. Perry Ranch Road Landscape Improvements.

No later than the issuance of the first building permit for development of any portion of Parcel 3A, BRI, LLC shall construct and offer for dedication to the City a landscaped buffer on the north side of Perry Ranch Road as shown on Exhibit J.

Section 6.02.02. Herdal Drive.

Prior to the issuance of the first building permit for any structure in Plan Area 1; BRI, LLC shall design, construct and offer for dedication to the City traffic calming measures on the extension of Herdal Drive, west of the current terminus of Herdal Drive. The traffic calming measures shall be shown on the improvement plans for the extension of Herdal Drive. BRI, LLC acknowledges that the Public Works Director must review and approve in advance any such traffic calming measures and that such measures must comply with Applicable Law, including Auburn Municipal Code sections 70.70 – 70.72, and with the design recommendations of a registered

traffic engineer or other appropriately licensed design professional.

Section 6.02.03. Herdal Werner Connector.

Prior to the issuance of any building permit within Plan Area 1, and after the City approves the first improvement plans for Plan Area 1 submitted by BRI, LLC with respect to improvements, BRI, LLC shall offer for dedication to the City a 60-foot-wide easement on the Herdal - Werner Connector, as shown on Exhibit C.

Section 6.03. Offsite Road Paving.

Where Project construction necessitates removal or disturbance of the surface of existing City streets (e.g., for the installation/extension of utilities), BRI, LLC shall restore the roadway consistently with current City standards. At a minimum, BRI, LLC shall provide a 2-inch overlay from curb to curb for the length of the street surface disturbed by Project construction.

Section 6.09. Wastewater.

(a) Without limiting any other obligation of BRI, LLC hereunder, BRI, LLC shall pay the City's sewer connection fees in effect when the City issues each building permit for structures within Plan Area 1.

Section 6.10. Reserved.

Section 6.11. Affordable Housing.

(a) Prior to approval of the first small-lot tentative map, BRI, LLC shall identify and record affordability restrictions upon the parcels on which affordable housing is to be provided satisfactory in form and content to the Director and the City Attorney of City ("City Attorney") and consistent with the Approvals which shall ensure the affordability of that housing for not less than 55 years.

(b) The Project shall comply with the Sacramento Area Council of Governments ("SACOG") compact regarding affordable housing (a copy of which is attached as Exhibit D). Accordingly, and without limitation, housing units built within Plan Area 1 shall include the following affordable components:

- (1) 4% of housing units must be made affordable to "very low income families;"
- (2) 4% of housing units must be affordable to "low income families;" and
- (3) 2% of housing units must be affordable to "moderate income families"

as each of those terms is defined in the SACOG compact and Applicable Law.

Section 6.12. Open Space Trails.

(a) BRI, LLC shall design, construct and convey to the Homeowners Association a series of

open space trails for pedestrian access, as shown on Exhibit E. BRI, LLC shall build any such trails as follows:

- (1) Concurrently with development of Parcel 2, BRI, LLC shall construct a trail segment adjacent to Parcel 2 from the western edge of Parcel 2 to the Herdal Werner Connector; no certificate of occupancy, final approval, or other approval for use of a structure on Parcel 2 may issue until this segment of trail is complete;
- (2) Concurrently with development of the first to develop of Parcel 3A or 3B; BRI, LLC shall build a trail segment adjacent to Parcels 3A and 3B, from Perry Ranch Road to the trail segment constructed pursuant to subparagraph (1) of this paragraph; no certificate of occupancy, final approval, or other approval for use of a structure on either Parcel 3A or Parcel 3B may issue until this segment of trail is complete;
- (3) Concurrently with development of Parcel 5, BRI, LLC shall construct a trail segment from the eastern edge of Parcel 2, along the Herdal - Werner Connector, to the boundary of Plan Areas 1 and 2; no certificate of occupancy, final approval, or other approval for use of a structure on Parcel 5 may issue until this segment of trail is complete;
- (4) BRI, LLC shall construct the three segments of Plan Area 1 trail required by subparagraphs (1) through (3) of this paragraph to provide a connection to the trail in Future Plan Area 2 at the intersection of the Herdal Werner Connector with the Future Plan Area 2 boundary. The extension of the trail into Future Plan Area 2 shall be an obligation of the developer of Future Plan Area 2.

For purposes of this paragraph 6.12(a), a trail segment is “complete” when it has been constructed to the satisfaction of the City and has been conveyed to the Homeowners Association or, should the Homeowners Association not yet exist, legally enforceable assurances, in a form acceptable to the City Attorney, have been given that the trail segment will be so conveyed upon formation of the Homeowners Association.

- (b) The Homeowners Association (described in Section 6.13 below) shall maintain the foregoing Plan Area 1 trails, but all such trails shall be open to the public.

Section 6.13. Homeowners Association.

- (a) Prior to recordation of the first Small Lot Map for any land in Plan Area 1, BRI, LLC shall establish a homeowners association for Plan Area 1 (“Plan Area 1 HOA”).
- (b) BRI, LLC shall establish appropriate conditions, covenants, and restrictions (“CC&Rs”) prior to the establishment of Plan Area 1 HOA, or any other HOAs, which shall be subject to review and approval by the Director and the City Attorney to ensure that those CC&Rs provide for the perpetual maintenance of all common areas, comply with this Agreement (including, without limitation, its mandate that the City bear no costs of the Project and the requirement of Section 7.03.01), and comply with the Approvals. Until it has obtained that approval, BRI, LLC

may not record the first Small Lot Map for any portion of Plan Area 1 nor obtain a building permit for any structure on a parcel for which no small lot map is required.

(c) In particular and without limitation, the CC&Rs shall make the Plan Area 1 HOA responsible for perpetual maintenance of:

(1) Any common areas within Plan Area 1, including common open spaces, trails and compliance with fuel modification requirements for fire safety as provided by Applicable Law;

(2) common landscaped areas; and

(3) landscaping along the extension of Herdal Drive from the current terminus of Herdal Drive to the Bloomer Cut bridge.

(d) BRI, LLC may establish additional homeowner associations (“HOAs”) within Plan Area 1 for subareas of Plan Area 1. However, any such subarea HOAs shall be in addition to, and not instead of, the Plan Area 1 HOA and the lots subject to the CC&Rs for any subarea HOA shall continue to be subject to the CC&Rs applicable to Plan Area 1 as a whole.

(e) The CC&Rs for any HOA within Plan Area 1 shall obligate the HOA to implement and maintain best management practices to control the quantity and quality of drainage through and from the site in accordance with Applicable Law.

Section 6.14. BRI, LLC Funding Commitments.

Section 6.14.01. General Fees and Funding.

In addition to the financial obligations of BRI, LLC pursuant to Article 5 of this Agreement:

(a) Prior to issuance of the sixth building permit for any structure in Plan Area 1, BRI, LLC shall pay the City \$38,000 to offset the funding gap identified in the Fiscal Study dated October 20, 2009, a copy of which is attached as Exhibit F.

(b) Without limiting any other obligation under this Agreement or Applicable Law, BRI, LLC shall pay all City-wide development impact fees due when the City issues any building permit for a structure within Plan Area 1 in the amount of that fee generally applicable at the time the permit issues. Such fees may include those that are developed pursuant to the studies referenced in Section 6.10(b).

Section 6.14.02. Union Pacific Railroad Processing Fees.

In conjunction with the development of Plan Area 1, it is anticipated that BRI, LLC will require the consent of Union Pacific Railroad (“UP”) to BRI, LLC’s design and construction of bridges across UP railroad tracks. BRI, LLC shall pay all costs that the City incurs in obtaining UP’s review and approval of bridge designs, pursuant to the letter dated February 1, 2008 by Jack

Warren, City of Auburn Public Works Director, a copy of which is attached as Exhibit G. City shall require BRI, LLC to advance such costs prior to submittal to UP.

Section 6.14.03. Entitlement Review Fees.

BRI, LLC or its successors in interest shall pay for all costs incurred by the City related to the processing of Approvals including, but not limited to:

- (1) future amendments of the BRSP for Plan Area 1;
- (2) future amendments to this Agreement;
- (3) CEQA review costs with respect to any Approval;
- (4) costs incurred by the City with respect to any outside consultants that the City reasonably retains to assist in the review and issuance of Approvals; and
- (5) any and all other costs related to processing Subsequent Approvals.

Section 6.15. Documentation.

- (a) Within ninety (90) days of the Vesting Date, BRI, LLC shall provide the City with electronic copies of the BRSP in both Microsoft Word and InDesign formats, both to be compatible with the City's software.
- (b) Within ninety (90) days of all Subsequent Approvals, BRI, LLC shall provide to the City any subsequent changes to the BRSP in both Microsoft Word and InDesign formats.
- (c) City may withhold future permits until all documents required by subparagraphs (a) and (b) above have been provided to the City's satisfaction.

ARTICLE 7. OTHER COMMITMENTS OF CITY AND BRI, LLC

Section 7.01. Mutual Cooperation for Other Governmental Permits. City and BRI, LLC, as appropriate, each shall be responsible for applying to other governmental or quasi-governmental agencies for necessary permits and approvals (e.g., agencies having jurisdiction over water supply; wastewater treatment, reuse and disposal; Project access; and, wetlands-related and other biological issues associated with the Project). City and BRI, LLC each shall take any and all actions as may be necessary or appropriate to process successfully such permits and approvals, provided such permits and approvals are mutually determined by the City and BRI, LLC to be reasonably necessary or desirable for the construction, maintenance or operation of the Project and are consistent with the BRSP and BRI, LLC fulfills its obligation to hold the City harmless from any cost associated with such permits and approvals.

Section 7.02. Tree Mitigation.

- (a) Tree mitigation shall comply with the provisions of the Auburn Tree Ordinance, Chapter 161 of the

Auburn Municipal Code, except as below:

- (1) At least half of all tree mitigation shall be provided with native trees (as that term is defined in Section 161.03 of the Auburn Municipal Code) consistent with the Auburn Tree Ordinance.
- (2) The in-lieu fee to mitigate the replacement of native trees shall be the greater of the amount required by the Auburn Tree Ordinance, or \$75 per inch of the diameter of a tree at breast height (dbh) as that term is defined in Section 161.03 of the Auburn Municipal Code.
- (3) Off-site tree mitigation for unincorporated areas in Placer County jurisdiction shall be consistent with Placer County mitigation requirements, or consistent with City standards upon agreement between the City and the County permitting use of City standards for that purpose.

Section 7.03. Special Conditions.

Section 7.03.01. All CC&Rs shall include a statement substantially as follows: “This property is contained within the boundaries of the Baltimore Ravine Specific Plan of the City of Auburn and is therefore subject to certain design guidelines and development standards in that Plan and Design Guidelines prepared pursuant to that Plan. The Plan and the Design Guidelines are available for public review in the Community Development Department of the City.”

Section 7.03.02. BRI, LLC shall cooperate with City in identifying and securing appropriate locations in Plan Area 1 for the installation and maintenance of wireless government access points, routers or other necessary equipment to provide access to the City’s proposed wireless government network, provided that such wireless installations shall not compete with commercial wireless systems or networks and shall not compromise or otherwise undermine the visual integrity of the design and appearance of buildings, and further provided that City shall indemnify the owner of any site or structure upon which such a wireless system is installed for any claims arising out of such installation.

Section 7.03.03. All public utilities easements (PUEs); public water, sewer, or storm drain easements; and public access easements shall be open and accessible to the City at all times.

Section 7.03.04. BRI, LLC shall provide cable or suitable conduit to each City facility or lot designated for City use for internet, emergency and smart technology access. The cable or suitable conduit shall be shown on the joint trench improvement plans and constructed before the final lift of asphalt is placed on the adjacent street.

ARTICLE 8. AMENDMENTS

Section 8.01. Amendments of Agreement.

Section 8.01.01. In General. This Agreement may be amended from time to time only upon the mutual written consent of City and BRI, LLC; provided, however, that in connection with the transfer of any portion of BRI, LLC’s Rights and/or Obligations under this Agreement to another person, entity, or organization pursuant to the provisions of Article 11 below, BRI, LLC, such other person, entity or

organization and City may agree that the signature of such other person, entity or organization may be required to amend this Agreement insofar as such amendment would materially alter the Rights and/or Obligations of such other person, entity, or organization hereunder. In no event shall the signature or consent of any "Non-Assuming Transferee" (as defined in Section 11 .03 below) be required to amend this Agreement.

Section 8.01.02. Future Agreements. Except as BRI, LLC may otherwise agree, any Agreement entered into after the Vesting Date between City and another person, entity or organization with respect to any portion of Plan Area 1 shall be consistent with the terms and provisions of this Agreement.

Section 8.01.03. Subsequent Approvals and CEQA Compliance. BRI, LLC acknowledges that the Project may require amendments to the BRSP and CEQA compliance for such amendments and other Subsequent Approvals and City's requirement of such amendments, CEQA compliance or Subsequent Approvals is not inconsistent with BRI, LLC's rights under this Agreement.

ARTICLE 9. ANNUAL REVIEW

Section 9.1. Development Agreement Review.

Section 9.01.01. In General. The Director shall review this Agreement annually to ascertain BRI, LLC's good faith compliance with its terms (the "Development Agreement Review"). The Development Agreement Review shall be conducted following the procedures set forth in this Article 9. BRI, LLC shall provide information as reasonably requested by City for purposes of any Development Agreement Review. As noted in footnote one above, "BRI, LLC" as used in this Agreement in general, and in this Article 9 in particular, means BRI, LLC and each and every permitted successor or assign of land subject to this Agreement and as to which this Agreement has not terminated and thus includes the "responsible parties" defined in Section 9.06 below.

Section 9.01.02. Director's Findings of Compliance. If the Director finds good faith compliance by BRI, LLC with the terms of this Development Agreement, the Director shall issue a "Finding of Development Agreement Compliance," which shall be in recordable form and may be recorded by BRI, LLC or any "Mortgagee" (as defined in Section 12.01 below). The issuance of a Finding of Development Agreement Compliance by the Director shall be final and conclude the Development Agreement Review for the applicable period.

Section 9.01.03. Finding of Development Agreement Noncompliance. If the Director finds that BRI, LLC has not complied in good faith with the terms or conditions of this Agreement, the Director shall issue a "Finding of Development Agreement Noncompliance" and shall deliver to BRI, LLC the notice specified in Section 10.01.01 below. A Finding of Development Agreement Noncompliance shall be deemed a notice of default with respect to the defaulting party and shall commence the sixty (60) day cure period set forth in Section 10.01.01 below.

Section 9.01.04. Appeal of Finding. Any appeal of the issuance of a Finding of Development Agreement Compliance or Finding of Development Agreement Noncompliance must be filed within twenty days following such issuance. The filing of such an appeal shall toll the 60-day cure period specified below. After a duly noticed public hearing on the appeal, the City Council shall issue a final Finding of Development Agreement Compliance or Finding of Development Agreement Noncompliance. If the City Council issues a final Finding of Development Agreement Noncompliance, that Finding shall be deemed a notice of default and shall commence a new 60-day cure period under Section 10.01.01 below.

Section 9.02. Preliminary Procedures. The Annual Review shall be initiated on or before the anniversary of the Vesting Date of each year during the term of this Agreement by the submission to City by BRI, LLC of a request to initiate the Annual Review. Should BRI, LLC fail to timely initiate an Annual Review, the City may give notice to BRI, LLC that City is initiating the Annual Review. Within thirty (30) days following the delivery of such request or notice, Director shall provide BRI, LLC a written description of the information the Director reasonably determines to be necessary for the Annual Review. BRI, LLC and Director shall thereafter meet and confer as to (i) the matters described in Director's request for information; and (ii) deadlines for submittal of the information requested by Director, additional meetings between City and BRI, LLC to discuss that information, and preparation of a draft report by Director concerning the matters to be addressed in the Annual Review.

Section 9.03. Meetings and Conferences. Following submittal by BRI, LLC of any information requested by Director as set forth in Section 9.02 above, BRI, LLC and Director shall meet and confer in an effort to agree as to any and all such subjects appropriately included in the Annual Review. The Parties' respective positions on any disagreements not resolved during such meetings and conferrals shall be set forth in the "Draft Annual Report" described below.

Section 9.04. Preparation of Annual Report. Following the meetings and conferrals described in Section 9.031 above, Director shall prepare a draft report summarizing the results of such meetings and conferrals and stating the Director's conclusions with respect to each of the matters required to be included in the Annual Review (the "Draft Annual Report").. Director shall deliver to BRI, LLC a copy of the Draft Annual Report and any Agreements or analyses used or relied upon by Director to prepare the report. BRI, LLC shall be permitted an opportunity to respond to Director's evaluation of its performance. Director shall, upon due consideration of any information presented by BRI, LLC, issue a final annual report (the "Annual Report") consisting of the Annual Review and any modifications. The Annual Report may be appealed pursuant to the provisions of Section 9.01.04 of this Agreement.

Section 9.05. Other Investigations and Evaluations. City may investigate or evaluate any subject matter that is properly the subject of an Annual Review from time to time during the course of any given year and regardless of whether such investigation or evaluation takes place as a part of an Annual Review.

Section 9.06. Annual Review Fee. BRI, LLC shall pay the City's actual cost to conduct the annual review as follows:

BRI, LLC and every other person other than an Affiliate of BRI, LLC for which it agrees to be responsible, who owns land subject to this Agreement and as to which land this Agreement has not then terminated on the date the Annual Review is initiated as specified in Section 9.02 shall be a "responsible party" for purpose of the Annual Review.

(a) If there is one responsible party, that responsible party shall provide a deposit of \$1,500 to the City within 10 days of notice to that responsible party of the initiation of the Annual Review. If there are multiple responsible parties, then each shall provide a deposit of \$750 to the City by that time.

(b) The Director shall draw upon such deposits as necessary to recover the City's actual costs to conduct the Annual Review and, if necessary, shall request the responsible parties to replenish that

deposit should it be reduced below the amount the Director reasonably estimates to be required to complete the Annual Review. Upon final approval of the Annual Review, and determination of any appeal, any remaining balance of the deposit shall be returned to the responsible parties in proportion to their contributions to the funds to be refunded.

ARTICLE 10. DEFAULT, REMEDIES, TERMINATION

Section 10.01. Defaults.

Section 10.01.01. Notice and Cure.

(a) Any failure by City or BRI, LLC to perform any term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure From the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any such notice shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within a 60-day period, then the commencement of the cure within that time, and the diligent prosecution to completion of the cure thereafter, shall suffice. If the alleged failure is cured, then no default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a default shall exist and the noticing Party may exercise any of the remedies available under Sections 10.02 through 10.05 below.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default.

Section 10.01.02. Actions during Cure Period.

(a) A Party charged shall not be considered in default for purposes of this Agreement during any cure period specified under Section 10.01.01 and during any period preceding delivery of a notice of failure or default. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution or termination of the Agreement.

(b) City shall continue to process in good faith applications for Approvals during any cure period, but need not approve any such application if it relates to a development project on Plan Area 1 with respect to which there is an alleged default hereunder.

Section 10.02. Remedies of Non-Defaulting Party.

Section 10.02.01. In General. In the event any Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following:

(i) waive such default if permitted by Applicable Law; (ii) in City's case, pursue administrative remedies as provided in Section 10.03 below, (iii) pursue judicial remedies as provided for in Section 10.04 below; and/or (iv) terminate this Agreement as and to the extent permitted by Section 10.05 below, however in no event shall City modify this Agreement as a result of a default except in accordance with the provisions of Section 10.01 above.

Section 10.02.02. Severability of Default. City acknowledges that the development of the Project may be carried out by more than one person, entity or organization under this Agreement (e.g., portions of BRI, LLC's interest in Plan Area 1 and this Agreement may be transferred to another person, entity or organization — a "Transferee" under Article 11 below). Accordingly, (i) if City determines to terminate or exercise any other remedy under this Agreement due to a default by BRI, LLC or any Transferee (hereinafter "Defaulting Developer"), such termination or other remedy shall apply only with respect to the Rights and Obligations of such Defaulting Developer, (ii) City shall, to the extent possible, refrain from seeking any termination of this Agreement or other remedy if such remedy materially would affect the ability of a non-defaulting BRI, LLC and/or a Transferee (hereinafter "Non-Defaulting Developer") to realize the Rights or fulfill the Obligations provided hereunder, and (iii) any termination of this Agreement as to any Defaulting Developer shall be deemed to terminate only those Rights and Obligations arising hereunder between City and such Defaulting Developer. The Parties acknowledge and agree that, in accordance with the provisions of Article 11 below, more than one Transferee may be responsible for certain actions required to be undertaken or not to be undertaken by this Agreement, and that more than one Transferee therefore may be in default with respect thereto. The Parties further acknowledge and agree that, notwithstanding the provisions of (ii) above, in certain instances it may not be possible for City to exercise remedies against the Defaulting Developer of one portion of the Project without affecting in some way a Non-Defaulting Developer of some other portion of the Project and City may therefore exercise such remedies despite any adverse impact on a Non-Defaulting Developer.

Section 10.03. Administrative Remedies. Except as otherwise specifically stated in this Agreement, including Section 10.02 above, City may exercise any and all administrative remedies to the extent necessary or appropriate to secure compliance with the terms and conditions of this Agreement. Such administrative remedies may include, among others, withholding building permits, certificates of occupancy or other Approvals relating to that portion of the Project in default under the terms and conditions of this Agreement.

Section 10.04. Judicial Remedies. Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, enforce by specific performance the obligations and rights of the Parties hereto or obtain any other remedy consistent with this Agreement, provided, however, that in no event shall City or BRI, LLC be entitled hereunder to monetary damages for any cause, including breach of contract by the other Party to this Agreement. Nothing in this section shall be deemed to limit either Party's rights under the Tort Claims Act or to a payment required by this Agreement. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

Section 10.05. Termination of Agreement Due to Default

Section 10.05.01. In General. Either City or BRI, LLC may terminate this Agreement following the procedures set forth in Section 10.05.02 below in the event of a default by the other Party, provided (i) such default is prejudicial to the interests of the non-defaulting Party and is neither minor nor technical and (ii) in the case of any termination by City, City first shall have exercised any and all administrative or

other remedies available to secure BRI, LLC's compliance with the terms and provisions of this Agreement and compliance has not resulted. Notwithstanding the provisions of (ii) above, City shall not be required, as a prerequisite to termination of this Agreement, to exercise its administrative and other remedies for a period exceeding 180 days or such longer period as may be agreed by the Parties. A termination of this Agreement by BRI, LLC or a Transferee as to any portion or portions of Plan Area 1 shall not affect the Rights or Obligations of BRI, LLC or any other Transferee as to any other portion or portions of Plan Area 1.

Section 10.05.02. Procedures for Termination

(a) Prior to any proposed termination of this Agreement pursuant to this Section 10.05, and following the 180-day period specified in Section 10.05.01 above to the extent applicable, a non-defaulting Party intending to seek termination of this Agreement shall deliver to the defaulting Party (or Parties) a written 'Preliminary Notice of Intent to Terminate' this Agreement, and all Parties shall meet and confer in an attempt to arrive at a mutually acceptable alternative to termination. If the Parties can agree on no such alternative, then the non-defaulting Party desiring to terminate this Agreement shall deliver to the non-defaulting Party a written "Final Notice of Intent to Terminate" this Agreement.

(b) Within sixty (60) days after a Final Notice of Intent to Terminate is delivered by City to a defaulting Party, the matter shall be reviewed and considered by the City Council in the manner set forth in California Government Code §§ 65865, 65867, and 65868. Termination shall be effective thirty (30) days following such consideration and review by the City Council, unless the default is earlier resolved to the mutual satisfaction of the parties.

(c) Within sixty (60) days after a Final Notice of Intent to Terminate is delivered by BRI, LLC to City, the matter shall be reviewed and considered by the City Council for the purpose of determining whether City should take any further curative action in light of the delivery by BRI, LLC of a Final Notice of Intent to Terminate. Termination shall be effective thirty (30) days following such consideration and review by the City Council (or ninety (90) days following delivery by BRI, LLC of a Final Notice of Intent to Terminate if the City Council fails to complete its review and consideration of such matter in accordance with the preceding sentence), unless the default is earlier resolved to the mutual satisfaction of the Parties.

ARTICLE 11. ASSIGNMENT, TRANSFER AND NOTICE

Section 11.01. Assignment of Interests, Rights and Obligations. Prior to the Vesting Date, BRI, LLC may only transfer or assign ("Transfer") the Rights and Obligations of this Agreement to an Affiliated Party, as defined in Section 1.01 of this Agreement, or any other person, entity or organization which City Council approves in its sole discretion. From and after the Vesting Date, BRI, LLC may Transfer all or any portion of its Rights and Obligations under this Agreement to any or all of Plan Area 1 (the "Transferred Property") to any person, entity or organization acquiring an interest or estate in such Transferred Property, including, without limitation, purchasers or ground lessees of lots, parcel or facilities on such portion of Plan Area 1 (a "Transferee"). Any such Transfer shall relieve the transferring party (a "Transferor") of any and all Rights and Obligations under this Agreement insofar as they pertain to the Transferred Property only as provided in this Article 11.

Section 11.02. Transfers to Third Persons.

Section 11.02.01. In General. In connection with any Transfer of all or any portion of Plan Area 1 other than a transfer or assignment to a “Non-Assuming Transferee” as described in Section 11.03 below, an “Affiliated Party” or a “Mortgagee” (as defined in Section 12.01 below), the Transferor and the Transferee may enter into a written agreement regarding the respective Rights and Obligations of the Transferor and the Transferee in and under this Agreement (a “Transfer Agreement”). With the consent of the City as provided below, any such Transfer Agreement may (i) release the Transferor from any Rights and Obligations under this Agreement that relate to the Transferred Property, provided the Transferee expressly assumes all such Rights and Obligations, (ii) transfer to the Transferee rights to improve that portion of Plan Area 1 transferred and any other Rights and Obligations of the Transferor arising under this Agreement, and (iii) address any other matter deemed necessary or appropriate in connection with the Transfer of the Transferred Property.

Section 11.02.02. City Review of Release Provisions.

(a) A Transferor shall have the right, but not the obligation, to seek City’s consent to those provisions of any Transfer Agreement purporting to release such Transferor from any Rights and Obligations arising under this Agreement (the “Release Provisions”). If a Transferor fails to seek City’s consent or City fails to consent to any such Release Provisions, then such Transferor may nevertheless transfer to the Transferee any and all Rights and Obligations of such Transferor arising under this Agreement (as described in Sections 11.02.01(i) and (ii) above) but, with respect to City, shall not be released from those Rights and Obligations described in the Release Provision to which City has failed to consent. If City consents to any Release Provisions, then to the extent of that consent (i) the Transferor shall be free from any and all Rights and Obligations accruing on or after the date of any Transfer with respect to those Rights and Obligations described in such Release Provisions and (ii) no default hereunder by Transferee with respect to any Rights and Obligations from which the Transferor has been released shall be attributed to the Transferor nor may such Transferor’s rights hereunder be canceled or diminished in any way by any such default except as otherwise expressly provided herein with respect to defaults that cannot be enforced without harm to the interests of non-defaulting developers. City may consent to all, none, or some of the Release Provisions.

(b) City’s consent to any such Release Provisions may be withheld only if (i) reliable evidence demonstrates the Transferee will be unable to perform the Rights and Obligations proposed to be assumed by the Transferee, (ii) the Rights and Obligations may not reasonably be allocable among particular portions of Plan Area 1, such as the Transferred Property, or (iii) the Transferor or Transferee fails to provide acceptable security, as and if reasonably requested by City, to ensure the performance of the Rights and Obligations proposed to be assumed by the Transferee pursuant to the Transfer Agreement. City’s consent to any Release Provisions shall not be unreasonably withheld. City shall respond within thirty (30) days to any request by a Transferor for City’s consent to any Release Provisions.

(c) Subject to the provisions of subsection (b) above, because and to the extent certain obligations arising under this Agreement may not reasonably be allocable among particular portions of the Project, City may refuse to release the Transferor of one portion of the Project from such Rights and Obligations under this Agreement even though the Rights and Obligations are being or have been assumed by the Transferee of some other portion of the Project.

Section 11.03. Non-Assuming Transferees. Except as otherwise required by a Transferor, the Obligations of a Transferor under this Agreement shall not apply to any purchaser of any property that has been established as a single legal parcel for nonresidential use that do not require any further on-site or off-site infrastructure. The Transferee in such a transaction and the successors and assigns of such a Transferee ("Non-Assuming Transferees") shall be deemed to have no Obligations under this Agreement, but shall continue to benefit from the Rights provided by this Agreement. Nothing in this section shall exempt any Transferred Property transferred to a Non-Assuming Transferee from payment of applicable fees, taxes and assessments or compliance with applicable conditions of approval.

ARTICLE 12. MORTGAGEE PROTECTION

Section 12.01. In General. The provisions of this Agreement shall not prevent or limit BRI, LLC's right to encumber Plan Area 1 or any portion thereof, or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to such portion. City acknowledges that lenders providing such financing and other "Mortgagees" (defined below) may require certain interpretations and modifications of this Agreement and agrees upon request, from time to time, to meet with BRI, LLC and representatives of such lenders to negotiate in good faith with respect to any such request for interpretation or modification. City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any person holding a mortgage, deed of trust or other security instrument on all or any portion of Plan Area 1 made in good faith and for value (each, a "Mortgagee"), shall be entitled to the rights and privileges set forth in this Article 12.

Section 12.02. Impairment of Mortgage or Deed of Trust. Except as otherwise specifically stated in the terms of any security instrument held by a Mortgagee, no default under this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on Plan Area 1 made, or other interest in Plan Area 1 acquired by, any Mortgagee in good faith and for value.

Section 12.03. Notice of Default to Mortgagee. If a Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, City shall exercise its best efforts to provide to such Mortgagee written notification from City of any failure or default by BRI, LLC in the performance of BRI, LLC's obligations under this Agreement, which notification shall be provided to such Mortgagee at such time as such notification is delivered to BRI, LLC.

Section 12.04. Right of Mortgagee to Cure. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by BRI, LLC during the cure period allowed BRI, LLC under this Agreement, plus an additional 60 days to cure such failure or default if that time is necessary for the Mortgagee to obtain possession of the property, such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure any such failure or default shall provide written notice to City of its undertaking; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

Section 12.05. Liability for Past Defaults or Obligations. Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of Plan Area 1 or any part thereof pursuant to foreclosure, eviction or otherwise, shall take such property subject to the Rights and Obligations of this Agreement and in no event shall any such property be released from any

Obligations including, without limitation, those associated with use and development of such property under this Agreement. Nothing in this Article 12 shall prevent City from exercising any remedy it may have for a default under this Agreement provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of BRI, LLC arising prior to acquisition or possession of such property by such Mortgagee, although some such obligations may run with the property under the terms of this Agreement and/or Applicable Law.

ARTICLE 13. GENERAL PROVISIONS

Section 13.01. Incorporation of Recitals and Exhibits. The Recitals set forth above and the Exhibits attached hereto are incorporated herein as though set forth in full.

Section 13.02. Project Is A Private Undertaking. The Project is a private development, and BRI, LLC shall exercise full dominion and control over the Project subject only to the limitations and obligations of BRI, LLC contained in this Agreement or otherwise established pursuant to Applicable Law.

Section 13.03. Cooperation in the Event of Legal Challenge

Section 13.03.01. In General. In the event of any administrative, legal or equitable action or other proceeding instituted by any person or entity not a party to this Agreement challenging the validity of any provision of this Agreement, any Approval or the sufficiency of any environmental review of this Agreement or any Approval or under CEQA (each a “Third Party Challenge”), the Parties shall promptly meet and confer as to the most appropriate response to such Third Party Challenge; provided, however, that any such response shall be consistent with the provisions of Sections 13.03.02 and 13.03.03 below.

Section 13.03.02. Tender to and Conduct of Defense by BRI, LLC. City shall tender to BRI, LLC the complete defense of any Third Party Challenge and upon such tender BRI, LLC shall indemnify, defend and hold harmless City, and its officers, agents and employees against any and all fees and costs arising out of the defense of such Third Party Challenge.

Section 13.03.03. Defense by City. If BRI, LLC should fail to accept City’s tender of defense as set forth in Section 13.03.02, City may defend such Third Party Challenge and control the defense and/or settlement of such Third Party Challenge as City decides (in its sole discretion), and City may take any and all actions it deems necessary and appropriate (in its sole discretion) in connection therewith. BRI, LLC shall indemnify defend and hold harmless City and its officers, agents and employees against any and all fees and costs arising out of the defense of such Third Party Challenge by City.

Section 13.04. Defense and Indemnity. BRI, LLC shall defend, hold harmless and indemnify City and its officers, agents and employees from and against any and all damages, claims, costs and liabilities arising out of the personal injury or death of any person, or damage to the property of any person, to the extent such damages, claims, costs or liabilities result from the acts of BRI, LLC or by BRI, LLC’s contractors, subcontractors, agents or employees related to the Project. Nothing in this Section 13.04 shall be construed to mean that BRI, LLC shall defend, hold harmless or indemnify City or its officers, agents or employees from or against any damages, claims, costs or liabilities arising from, or alleged to arise from, activities associated with the maintenance or repair by City or any other public agency of improvements that have been offered for dedication and accepted by City or such other public agency.

Section 13.05. Governing Law: Attorneys' Fees, Staff and Consulting Costs. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either Party because of any default under this Agreement or to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing Party shall be entitled to reasonable and actual attorneys' fees, court costs and such other costs as may be fixed by the Court. The terms and provisions of this Section 13.05 shall survive any termination of this Agreement. In the event BRI, LLC's successors and assigns include multiple parties (such as future merchant builders) these parties will be proportionately responsible for the City's costs in proportion to the amount of acreage they own within Plan Area 1. Venue for any action to interpret or enforce this Agreement shall lie in Placer County, California and BRI, LLC hereby consents to personal jurisdiction there for purposes of any such action.

Section 13.06. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Permitted Delay" as hereinafter defined. For purposes hereof, Permitted Delay shall include delay beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) including, but not limited to (i) acts of God, (ii) civil commotion, (iii) riots, (iv) strikes, picketing or other labor disputes, (v) shortages of materials or supplies, (vi) damage to work in progress by reason of fire, floods, earthquake or other casualties, (vii) failure, delay or inability of the other Party to act, (viii) as to City only, with respect to completion of the Annual Review or processing applications for Approvals, the failure, delay or inability of BRI, LLC to provide adequate information or substantiation as reasonably required to complete the Annual Review or process applications for Approvals; (ix) delay caused by governmental restrictions imposed or mandated by governmental entities other than the City, (x) enactment of conflicting state or federal laws or regulations, (xi) judicial decisions or similar bases for excused performance, and (xii) a Third Party Challenge. Any Party claiming a Permitted Delay shall notify the other Party (or Parties) in writing of such delay within thirty days of the commencement of the delay, which notice ("Permitted Delay Notice") shall include the estimated length of the Permitted Delay. A Permitted Delay shall be deemed to occur for the time period set forth in the Permitted Delay Notice unless a Party receiving the Permitted Delay Notice objects in writing within ten days of receipt of the Permitted Delay Notice. In the event of such objection, the Parties shall meet and confer within thirty days after the date of the objection to attempt to resolve their disagreement regarding the Permitted Delay. If no mutually acceptable solution can be reached, either Party may take action as may be permitted under Article 10 above.

Section 13.08. Waiver.

Section 13.08.01. Legal Rights. BRI, LLC acknowledges and agrees that the terms and provisions of this Agreement specifically permit City in some instances to impose requirements upon the Project that City would not otherwise be able so to impose due to a lack of nexus, rough proportionality or reasonable relationship between the Project and such requirement or other reasons. To the extent any such requirement is imposed by City upon the Project in a manner consistent with the terms and provisions of this Agreement, BRI, LLC waives any right to challenge the imposition of such requirement by City. Except as otherwise provided in this Section 13.08.01, City shall act in accordance with Applicable Law.

Section 13.08.02. Other Rights. While Section 13.08.01 prohibits BRI, LLC from challenging City

requirements imposed consistently with this Agreement, nothing in this Agreement shall prevent BRI, LLC from petitioning the City with respect to any matter related to the Project.

Section 13.09. Notices. Any notice or communication required hereunder between the Parties must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail) or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given and received when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual receipt of the entire notice or communication by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a business day or on a Saturday, Sunday or City holiday shall be deemed to have been given and received on the next business day. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City to:

City Manager
City of Auburn
1225 Lincoln Way, Room 9
Auburn, CA 95603
Telephone: 530-823-4211 x192
Facsimile: 530-823-4216

With copies to:

Community Development Director
City of Auburn
1225 Lincoln Way, Room 3
Auburn, CA 95603
Telephone: 530-823-4211 x133
Facsimile: 530-885-5508

Michael G. Colantuono
Auburn City Attorney
11406 Pleasant Valley Road
Penn Valley, CA 95946
Telephone: 530-432-7357
Facsimile: 530-432-7356

Baltimore Ravine, LLC
130 Diamond Creek Place, Suite 1
Roseville, CA 95747
Telephone: 916-786-8158
Facsimile: 916-786-5750

Any Party hereto may at any time, by giving ten days' written notice to the other Parties, designate any other address or facsimile number for notice under this Agreement.

Section 13.10. No Joint Venture or Partnership. Nothing contained in this Agreement or in any agreement executed in connection with this Agreement shall be construed as creating a joint venture, partnership or any agency relationship between City and BRI, LLC. City shall have no responsibility for public improvements until such time as they are accepted by action of its City Council.

Section 13.11. Severability. If any provision of this Agreement is held invalid, void or unenforceable but the remainder of this Agreement can be enforced without failure of material consideration to any Party, then the remainder of this Agreement shall not be affected and shall remain in full force and effect, unless amended by mutual consent of the Parties.

Section 13.12. Estoppel Certificate. Any Party hereto and any Mortgagee may, at any time, and from time to time, deliver written notice to the other Party or Parties requesting such Party or Parties to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) as of the date of the last Annual Review, the requesting Party (or any Party specified by a Mortgagee) is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate or give a written detailed response explaining why it will not do so within thirty days following receipt of the request. Each Party acknowledges that such a certificate may be relied upon by third parties acting in good faith. A certificate provided by City establishing the status of this Agreement shall be in recordable form and may be recorded at the expense of the recording Party.

Section 13.13. Confirmation of Continued Effect of Agreement. Upon BRI, LLC's acquisition of fee title to any portion of Plan Area 1, BRI, LLC may request City's written confirmation of the continued effect of this Agreement following such acquisition, which confirmation shall be made (provided this Agreement has not been terminated in accordance with its terms) and delivered promptly to BRI, LLC and any third party notice to which BRI, LLC reasonably requests, including any title insurer.

Section 13.14. Further Assurances. Each Party shall execute and deliver to the other Party or Parties all such other further instruments and agreements and take all such further actions as may be reasonably necessary to carry out this Agreement and the Approvals and to provide and secure to the other Party or Parties the full and complete enjoyment of its Rights hereunder.

Section 13.15. Construction. All Parties have been represented by counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement of this Agreement. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

Section 13.16. Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

Section 13.17. Counterpart Execution. This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart. All such counterparts shall constitute one and the same Agreement.

Section 13.18. Time. Time is of the essence of each and every provision hereof.

Section 13.19. Good Faith/Fair Dealing. The Parties hereto agree that a covenant of good faith and fair dealing shall apply to all actions of the Parties to this Agreement. As used herein, this covenant shall mean that the Parties shall act in a reasonable manner, and no Party shall do anything which shall have the effect of destroying or injuring the Rights of any other Party under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Vesting Date.

CITY OF AUBURN, a municipal corporation

BALTIMORE RAVINE, LLC
a California limited liability company

By: _____
Bridget Powers
Mayor

By: _____
Stephen L. Des Jardins
Manager

ATTEST:

By: _____
Joseph G. R. LaBrie
City Clerk

APPROVED AS TO FORM:

By: _____
Michael G. Colantuono
City Attorney